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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,720	12/28/2001	Earl J. Braxton	NMC104A US	2117

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REMY J. VANOPHEM, P.C.
755 W BIG BEAVER ROAD
SUITE 1313
TROY, MI 48084

EXAMINER

PHILLIPS, CHARLES E

ART UNIT PAPER NUMBER

3751

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,720

Applicant(s)

BRAXTON, EARL J.

Examiner

Charles E. Phillips

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Applicant has traversed the restriction requirement of paper #2 and the following rebuttal is offered.

With respect to the paragraph bridging pages 1 and 2, the queried "means for receiving human waste material", is the "commode" of claim 10.

With respect to the query of the full paragraph of page 2, the restriction is based on the claimed substance and no wet closet is claimed. Furthermore, if it cannot be determined whether the device is wet or dry, see note (1) under sub-class 449. If applicant would be happier Group I could be classified in sub-class 661; however it is deemed proper in 449 although a significant historical basis has been established for this art in sub-class 460, these are largely more proper for the out dent.

With respect to the paragraph bridging pages 2-3; the Examiner understands applicant's claimed inventions and to the extent that counsel believes that he may be of help with the Examiner's understanding of the classification system he is invited to contact the Examiner for discussion thereof. The United States Patent and Trademark Office believes that the undersigned understands the classification system as it applies to class 4 as I have been accorded expert status for many years.

With respect to the arguments on page 3, first full paragraph, all that needs to be shown is that Group I as claimed constitutes a combination and the situation as set forth by applicant here is text book illustration of sub-combination not essential to combination (MPEP 806.05 (c) I).

With respect to the next two paragraphs, if applicant chooses to contest the statutory provisions of 35 USC 121, this may be done by way of petition to the Director.

With respect to the last paragraph of page 4, the discussion of independent is not germane, as no assertion of it has been made.

With respect to paragraph one on page 6, these arguments are flawed in that Group II could be used in another shelter and there is no logical reason that the Fig. 5 showing could not be used in the absence of a shelter.

With respect to the last paragraph on page 6, the term " the search" does not necessarily mean different sub-classes; however, in this case Group II may require a search in subs 458, 460 and 464 for the claimed "flip-top".

Accordingly the requirement of paper #2 is hereby made final.

The Examiner over looked the fact that Group I contains species accordingly:

This application contains claims directed to the following patentably distinct species of the claimed invention: Fig. 3 and Fig. 6.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

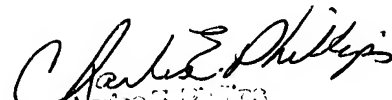
Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any incontinence this oversight has caused is regretted

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number 703-308-1515.


Charles E. Phillips
Patent Examiner